

**IN THE INCOME TAX APPELLATE TRIBUNAL “GAUHATI” BENCH, GAUHATI
VIRTUAL HEARING AT KOLKATA**

[Before Shri Rajpal Yadav, Vice President (KZ) & Shri Rajesh Kumar, Accountant Member]

I.T.A. No. 110 &167/Gau/2020

Assessment Years: 2016-17

Nyanya Gollo C-Sector, Itanagar, Papumpare, Arunachal Pradesh-791111 (PAN : AMSPG7155Q)	Vs.	Income Tax Officer, Ward-1, Tezpur.
Appellant		Respondent

Date of Hearing	28.08.2023
Date of Pronouncement	06.10.2023
For the Appellant	Shri S. P. Bhati, FCA
For the Respondent	Shri Soumndu Sekhar Das, DR

ORDER

Per Shri Rajesh Kumar, AM

Both these captioned appeals preferred by the assessee are against the separate orders of Ld. CIT(A), Guwahati-1, Guwahati dated 17.03.2020 passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) and dated 24.09.2020 passed u/s. 271(1)(c) of the Act for AYs 2016-17 passed u/s. 271(1)(c) of the Act respectively.

2. First we take up ITA No. 110/Gau/2020. The assessee has raised the following grounds of appeal:

- “1. For that the Ld. CIT(A) is not justified in upholding addition of Rs.29,08,124/- out of total addition of Rs.43,53,053/- made by assessing officer.*
- 2. For that the Ld. CIT(A) is not justified in making an enhancement of addition/income of Rs.6,99,98,011/- and that also without serving notice as required u/s. 251(2).*
- 3. For that the Ld. CIT(A) is not justified in issuing directions.”*

3. The issue raised in ground no. 1 is against the part confirmation of addition of Rs.29,08,124/- by Ld. CIT(A) out of total addition made by the AO of Rs.43,53,053/-. The facts in brief are that assessee filed return of income on 30.08.2017 showing total income at Rs.40,760/- by showing exempt income of Rs.43,53,053/-. The case of the assessee was selected for scrutiny under CASS and statutory notices were duly issued and served on the assessee. The AO on the basis of details/information filed by the assessee observed that the assessee has claimed exempt income of Rs.43,53,053/-. The AO also noted that assessee has filed copy of Schedule Tribe Certificate in respect of his claim u/s. 10(26) of the Act,

statement of bank account held with Vijaya Bank, Itanagar in the name of M/s. Gollo Enterprises and Shara Drug House, both are proprietary concerns of the assessee with CC Account held with SBI. According to the AO, the assessee has not furnished any explanation with regard to exempt income and accordingly added the same to the income of the assessee.

4. In the appellate proceeding, Ld. CIT(A) partly deleted the addition as made by the AO by holding that assessee is entitled to claim benefit of section 10(26) of the Act only with respect to the income earned from the gross receipt of Rs.1,80,61,610/- for which copies of work order has been furnished by the assessee thereby satisfying the condition that the said income has been earned within Schedule – 6 area. Accordingly, Ld. CIT(A) applied a rate of 8% on the said receipt of Rs.1,80,61,610/- and computed the profit at Rs.14,44,929/- as exempt income u/s. 10(26) of the Act. Ld. CIT(A) after deducting this amount from the total addition of Rs.43,53,053/- confirmed the remaining amount of Rs.29,08,124/-. Apart from this, ld. CIT(A) enhanced the assessment by making an addition of Rs.6,99,98,011/-. The Ld. CIT(A) while deciding the appeal observed and held as under:

“In view of the above stated facts, the Appellant is allowed the benefit of section 10(26) of the Act with respect to income earned in relation to Gross receipts of Rs.1,80,61,610/- for which copies of Work Order have been furnished by the Appellant thereby satisfying the condition that the said income has been earned within Schedule 6 area. Considering the fact that no details of income or net profit rate is available in the case of the Appellant, a Net profit rate of 8% is being adopted on the said gross receipts of Rs.1,80,61,610/- and accordingly the profit of Rs 14,44,929/- (8% of Rs.1,80,61,610/-) is allowed as exempted income under section 10(26) of the Act. Therefore, addition made by the AO, to the tune of Rs. 14.44,929/- is deleted and the balance addition of Rs. 29,08,124/- is confirmed.

Apart from the above, as noted above, the Appellant has grossly failed to establish the source of credits of Rs. 6,99,98,011/- in his bank account. The Appellant has not furnished any copy of VAT Returns/ Sales Tax Returns, no details of purchase has been furnished, a few sample copies of sale bills have been furnished but the authenticity and genuineness of the said sale bills remained in serious question in view of above discussions. The Appellant has tried to take shelter of provisions of Section 10(26) of the Act by making bogus and unverified claims with bald statements without actually satisfying the pre-conditions associated with the claim of exemption under section 10(26) of the Act. In view of the conduct and false claims made by the Appellant, I hold that the Appellant has earned income from undisclosed sources to the tune of Rs.6,99,98,011/- for which no details have been furnished by the Appellant for the reasons best known to him. Accordingly, the income of the Appellant is being enhanced by Rs.6,99,98,011/- for the year under consideration.”

5. After hearing the rival contentions and perusing the material available on record, we observe that the assessee is a Schedule Tribe, resident of state of Arunachal Pradesh and is entitled to claim exemption of income earned within the territory of Arunachal Pradesh u/s.

10(26) of the Act. We note that the assessee has furnished before the authorities below Schedule Tribe certificate, copy of PAN, copy of work order issued by PWD, Govt. of Arunachal Pradesh, copy of Aadhar card, certificate issued by ITO, Ward North Lakhimpur dated 12.09.2012 accepting the eligibility of the assessee to claim exemption u/s. 10(26), copy of the ITR, statement of 26AS, trading license of Sara Drug House and Gollo Enterprises besides, the bank statements. The AO disallowed the exemption claimed by the assessee u/s. 10(26) of the Act by passing a non-speaking order that assessee has not explained the exemption claimed u/s. 10(26) of the Act whereas the Ld. CIT(A) has partly allowed the addition only in respect of that work receipt which was evidenced by work order issued by Govt. of Arunacahal Pradesh and thus sustained the addition of Rs.29,08,124/- by deleting Rs.14,44,929/-. We observe from the rival contentions and records available before us that the status of the assessee as Schedule Tribe and claim u/s. 10(26) is not disputed. We have also observed that the assessee has earned the income from sale of medicines from proprietary concerns M/s. Sara Drug House and from contractual receipts from Gollo Enterprises by executing work contract of Govt. of Arunachal Pradesh.

6. The Ld. CIT(A) has picked up the credit side of the bank account and made the addition on that basis without issuing mandatory show cause notice to the assessee u/s. 251(2) of the Act. We have perused the provision of section 251(2) of the Act which provides that the Ld. CIT(A) shall not enhance the assessment or a penalty or reduce the amount of refund without giving reasonable opportunity of showing cause against such enhancement or reduction. In view of the said provision of the Act, at first place, we find that the Ld. CIT(A) has violated the provision of section 251(2) of the Act which is a basic requirement of providing an opportunity of hearing to the assessee before making enhancement of income. In our view, on this score alone, the enhancement is liable to be deleted. Besides, the assessee is a resident of Arunachal Pradesh and is enjoying the status of Schedule Tribe and a certificate has been issued by the ITO, Ward North Lakhimpur accepting the eligibility u/s. 10(26) of the Act and it is not the case of the revenue that the income has been earned outside the state of Arunachal Pradesh. We also note that whatever addition has been made, it is on the basis of the bank account furnished by the assessee. Considering these facts and circumstances, we set aside the order of Ld. CIT(A) and direct the AO to delete the addition.

7. The assessee has also raised additional ground which was not pressed at the time of hearing and is dismissed as not pressed.
8. The issue in ITA No. 167/Gau/2020 is as regards to confirmation of penalty u/s. 271(1)(c) of the Act which consequential in nature and is dismissed.
9. In the result, ITA No. 110/Gau/2020 is allowed and ITA No. 167/Gau/2020 is dismissed.

Order is pronounced in the open court on 6th October, 2023

Sd/-
(Rajpal Yadav)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 6th October, 2023

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A), Guwahati-1, Guwahati
4. CIT, ,
5. DR, ITAT, Guwahati,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata